

ESHB 1379 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED AND ENGROSSED 04/14/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that the state,
4 counties, and cities have moratoria authority granted through
5 constitutional and statutory provisions and that this authority, when
6 properly exercised, is an important aspect of complying with
7 environmental stewardship and protection requirements.

8 Recognizing the fundamental role and value of properly exercised
9 moratoria, the legislature intends to establish new moratoria
10 procedures and to affirm moratoria authority that local governments
11 have and may exercise and when implementing the shoreline management
12 act, while recognizing the legitimate interests of existing shoreline
13 related developments during the period of interim moratoria.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.58 RCW
15 to read as follows:

16 (1) Local governments may adopt moratoria or other interim official
17 controls as necessary and appropriate to implement this chapter.

18 (2)(a) A local government adopting a moratorium or control under
19 this section must:

20 (i) Hold a public hearing on the moratorium or control;

21 (ii) Adopt detailed findings of fact that include, but are not
22 limited to justifications for the proposed or adopted actions and
23 explanations of the desired and likely outcomes;

24 (iii) Notify the department of the moratorium or control
25 immediately after its adoption. The notification must specify the
26 time, place, and date of any public hearing required by this
27 subsection;

28 (iv) Provide that all lawfully existing uses, structures, or other
29 development shall continue to be deemed lawful conforming uses and may

1 continue to be maintained, repaired, and redeveloped, so long as the
2 use is not expanded, under the terms of the land use and shoreline
3 rules and regulations in place at the time of the moratorium.

4 (b) The public hearing required by this section must be held within
5 sixty days of the adoption of the moratorium or control.

6 (3) A moratorium or control adopted under this section may be
7 effective for up to six months if a detailed work plan for remedying
8 the issues and circumstances necessitating the moratorium or control is
9 developed and made available for public review. A moratorium or
10 control may be renewed for two six-month periods if the local
11 government complies with subsection (2)(a) of this section before each
12 renewal. If a moratorium or control is in effect on the date a
13 proposed master program or amendment is submitted to the department,
14 the moratorium or control must remain in effect until the department's
15 final action under RCW 90.58.090; however, the moratorium expires six
16 months after the date of submittal if the department has not taken
17 final action.

18 (4) Nothing in this section may be construed to modify county and
19 city moratoria powers conferred outside this chapter.

20 NEW SECTION. **Sec. 3.** (1) The legislature finds that a special
21 height moratorium is necessary along the shoreline known as the
22 "Olympia Isthmus" located in the city of Olympia between Capitol Lake
23 and Budd Inlet, which should hereinafter be designated a "shoreline of
24 statewide significance."

25 (2) The legislature further finds that:

26 (a) The shoreline along Capitol Lake is part of the Heritage park
27 area of the state capitol campus, in which the state of Washington has
28 invested millions of dollars to improve and make available for
29 statewide public use, education, and appreciation. It is also an
30 important element of the scenic, historic vista northward from the
31 capitol campus, in which the state of Washington and nonprofit
32 organizations have invested millions of dollars to construct excellent
33 public viewing opportunities of the north capitol campus and other
34 sights of both statewide and national significance;

35 (b) The state of Washington is continuing to invest millions of
36 dollars in water quality improvements along both Capitol Lake and Budd
37 Inlet shorelines;

1 (c) The Olympia Isthmus as a whole is historically significant,
2 fragile, and a major contributor to significant changes to the natural
3 estuary area of the area. The Olympia Isthmus was constructed by fill
4 in early 1911, with the reflecting lake created in the 1950s when the
5 dam was constructed at what is now called the Deschutes spillway;

6 (d) The vista is an integral part of the design of the state
7 capitol campus. The state's founders sited the capitol campus in its
8 location principally to take advantage of this expansive vista. The
9 vista: Is representative of much of the physical characteristics of
10 very large areas of the state; provides a visual and physical
11 connection between the capitol and the Puget Sound; is inspirational;
12 and promotes an appreciation of the scenic grandeur and rich natural
13 resources of our state; and

14 (e) The Washington state capitol, together with its spectacular
15 location, is a state and national treasure that has been passed down
16 from one generation to another.

17 (3) The legislature intends that the Olympia Isthmus be declared to
18 be a shoreline of statewide significance through the shoreline
19 management act to advance the public interest and to protect public
20 investments.

21 (4) This state and national treasure has been passed down from one
22 generation to another. It includes public vistas of Budd Inlet, south
23 Puget Sound, the Olympic mountains, and a broad range of forested
24 hills.

25 (5) Therefore, it is the intent of the legislature to take steps to
26 protect this state and national scenic and historic asset.

27 **Sec. 4.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read
28 as follows:

29 As used in this chapter, unless the context otherwise requires, the
30 following definitions and concepts apply:

31 (1) Administration:

32 (a) "Department" means the department of ecology;

33 (b) "Director" means the director of the department of ecology;

34 (c) "Local government" means any county, incorporated city, or town
35 which contains within its boundaries any lands or waters subject to
36 this chapter;

1 (d) "Person" means an individual, partnership, corporation,
2 association, organization, cooperative, public or municipal
3 corporation, or agency of the state or local governmental unit however
4 designated;

5 (e) "~~((Hearing[s]))~~ Hearings board" means the ~~((shoreline[s]))~~
6 shorelines hearings board established by this chapter.

7 (2) Geographical:

8 (a) "Extreme low tide" means the lowest line on the land reached by
9 a receding tide;

10 (b) "Ordinary high water mark" on all lakes, streams, and tidal
11 water is that mark that will be found by examining the bed and banks
12 and ascertaining where the presence and action of waters are so common
13 and usual, and so long continued in all ordinary years, as to mark upon
14 the soil a character distinct from that of the abutting upland, in
15 respect to vegetation as that condition exists on June 1, 1971, as it
16 may naturally change thereafter, or as it may change thereafter in
17 accordance with permits issued by a local government or the department:
18 PROVIDED, That in any area where the ordinary high water mark cannot be
19 found, the ordinary high water mark adjoining salt water shall be the
20 line of mean higher high tide and the ordinary high water mark
21 adjoining fresh water shall be the line of mean high water;

22 (c) "Shorelines of the state" are the total of all "shorelines" and
23 "shorelines of statewide significance" within the state;

24 (d) "Shorelines" means all of the water areas of the state,
25 including reservoirs, and their associated shorelands, together with
26 the lands underlying them; except (i) shorelines of statewide
27 significance; (ii) shorelines on segments of streams upstream of a
28 point where the mean annual flow is twenty cubic feet per second or
29 less and the wetlands associated with such upstream segments; and (iii)
30 shorelines on lakes less than twenty acres in size and wetlands
31 associated with such small lakes;

32 (e) "Shorelines of statewide significance" means the following
33 shorelines of the state:

34 (i) The area between the ordinary high water mark and the western
35 boundary of the state from Cape Disappointment on the south to Cape
36 Flattery on the north, including harbors, bays, estuaries, and inlets;

37 (ii) Those areas of Puget Sound and adjacent salt waters and the

1 Strait of Juan de Fuca between the ordinary high water mark and the
2 line of extreme low tide as follows:

3 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

4 (B) Birch Bay--from Point Whitehorn to Birch Point,

5 (C) Hood Canal--from Tala Point to Foulweather Bluff,

6 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,

7 (~~and~~)

8 (E) Padilla Bay--from March Point to William Point, and

9 (F) Budd Inlet--from the northwest extension of Capitol Waterway in
10 Olympia to the Deschutes spillway, and including the historic shoreline
11 of Budd Inlet contained in Capitol Lake from the Deschutes spillway to
12 the southwest extension of Capitol Waterway;

13 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
14 adjacent salt waters north to the Canadian line and lying seaward from
15 the line of extreme low tide;

16 (iv) Those lakes, whether natural, artificial, or a combination
17 thereof, with a surface acreage of one thousand acres or more measured
18 at the ordinary high water mark;

19 (v) Those natural rivers or segments thereof as follows:

20 (A) Any west of the crest of the Cascade range downstream of a
21 point where the mean annual flow is measured at one thousand cubic feet
22 per second or more,

23 (B) Any east of the crest of the Cascade range downstream of a
24 point where the annual flow is measured at two hundred cubic feet per
25 second or more, or those portions of rivers east of the crest of the
26 Cascade range downstream from the first three hundred square miles of
27 drainage area, whichever is longer;

28 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
29 this subsection (2)(e);

30 (f) "Shorelands" or "shoreland areas" means those lands extending
31 landward for two hundred feet in all directions as measured on a
32 horizontal plane from the ordinary high water mark; floodways and
33 contiguous floodplain areas landward two hundred feet from such
34 floodways; and all wetlands and river deltas associated with the
35 streams, lakes, and tidal waters which are subject to the provisions of
36 this chapter; the same to be designated as to location by the
37 department of ecology.

1 (i) Any county or city may determine that portion of a one-hundred-
2 year-flood plain to be included in its master program as long as such
3 portion includes, as a minimum, the floodway and the adjacent land
4 extending landward two hundred feet therefrom.

5 (ii) Any city or county may also include in its master program land
6 necessary for buffers for critical areas, as defined in chapter 36.70A
7 RCW, that occur within shorelines of the state, provided that forest
8 practices regulated under chapter 76.09 RCW, except conversions to
9 nonforest land use, on lands subject to the provisions of this
10 subsection (2)(f)(ii) are not subject to additional regulations under
11 this chapter;

12 (g) "Floodway" means the area, as identified in a master program,
13 that either: (i) Has been established in federal emergency management
14 agency flood insurance rate maps or floodway maps; or (ii) consists of
15 those portions of a river valley lying streamward from the outer limits
16 of a watercourse upon which flood waters are carried during periods of
17 flooding that occur with reasonable regularity, although not
18 necessarily annually, said floodway being identified, under normal
19 condition, by changes in surface soil conditions or changes in types or
20 quality of vegetative ground cover condition, topography, or other
21 indicators of flooding that occurs with reasonable regularity, although
22 not necessarily annually. Regardless of the method used to identify
23 the floodway, the floodway shall not include those lands that can
24 reasonably be expected to be protected from flood waters by flood
25 control devices maintained by or maintained under license from the
26 federal government, the state, or a political subdivision of the state;

27 (h) "Wetlands" means areas that are inundated or saturated by
28 surface water or groundwater at a frequency and duration sufficient to
29 support, and that under normal circumstances do support, a prevalence
30 of vegetation typically adapted for life in saturated soil conditions.
31 Wetlands generally include swamps, marshes, bogs, and similar areas.
32 Wetlands do not include those artificial wetlands intentionally created
33 from nonwetland sites, including, but not limited to, irrigation and
34 drainage ditches, grass-lined swales, canals, detention facilities,
35 wastewater treatment facilities, farm ponds, and landscape amenities,
36 or those wetlands created after July 1, 1990, that were unintentionally
37 created as a result of the construction of a road, street, or highway.

1 Wetlands may include those artificial wetlands intentionally created
2 from nonwetland areas to mitigate the conversion of wetlands.

3 (3) Procedural terms:

4 (a) "Guidelines" means those standards adopted to implement the
5 policy of this chapter for regulation of use of the shorelines of the
6 state prior to adoption of master programs. Such standards shall also
7 provide criteria to local governments and the department in developing
8 master programs;

9 (b) "Master program" shall mean the comprehensive use plan for a
10 described area, and the use regulations together with maps, diagrams,
11 charts, or other descriptive material and text, a statement of desired
12 goals, and standards developed in accordance with the policies
13 enunciated in RCW 90.58.020;

14 (c) "State master program" is the cumulative total of all master
15 programs approved or adopted by the department of ecology;

16 (d) "Development" means a use consisting of the construction or
17 exterior alteration of structures; dredging; drilling; dumping;
18 filling; removal of any sand, gravel, or minerals; bulkheading; driving
19 of piling; placing of obstructions; or any project of a permanent or
20 temporary nature which interferes with the normal public use of the
21 surface of the waters overlying lands subject to this chapter at any
22 state of water level;

23 (e) "Substantial development" shall mean any development of which
24 the total cost or fair market value exceeds five thousand dollars, or
25 any development which materially interferes with the normal public use
26 of the water or shorelines of the state. The dollar threshold
27 established in this subsection (3)(e) must be adjusted for inflation by
28 the office of financial management every five years, beginning July 1,
29 2007, based upon changes in the consumer price index during that time
30 period. "Consumer price index" means, for any calendar year, that
31 year's annual average consumer price index, Seattle, Washington area,
32 for urban wage earners and clerical workers, all items, compiled by the
33 bureau of labor and statistics, United States department of labor. The
34 office of financial management must calculate the new dollar threshold
35 and transmit it to the office of the code reviser for publication in
36 the Washington State Register at least one month before the new dollar
37 threshold is to take effect. The following shall not be considered
38 substantial developments for the purpose of this chapter:

1 (i) Normal maintenance or repair of existing structures or
2 developments, including damage by accident, fire, or elements;

3 (ii) Construction of the normal protective bulkhead common to
4 single family residences;

5 (iii) Emergency construction necessary to protect property from
6 damage by the elements;

7 (iv) Construction and practices normal or necessary for farming,
8 irrigation, and ranching activities, including agricultural service
9 roads and utilities on shorelands, and the construction and maintenance
10 of irrigation structures including but not limited to head gates,
11 pumping facilities, and irrigation channels. A feedlot of any size,
12 all processing plants, other activities of a commercial nature,
13 alteration of the contour of the shorelands by leveling or filling
14 other than that which results from normal cultivation, shall not be
15 considered normal or necessary farming or ranching activities. A
16 feedlot shall be an enclosure or facility used or capable of being used
17 for feeding livestock hay, grain, silage, or other livestock feed, but
18 shall not include land for growing crops or vegetation for livestock
19 feeding and/or grazing, nor shall it include normal livestock wintering
20 operations;

21 (v) Construction or modification of navigational aids such as
22 channel markers and anchor buoys;

23 (vi) Construction on shorelands by an owner, lessee, or contract
24 purchaser of a single family residence for his own use or for the use
25 of his or her family, which residence does not exceed a height of
26 thirty-five feet above average grade level and which meets all
27 requirements of the state agency or local government having
28 jurisdiction thereof, other than requirements imposed pursuant to this
29 chapter;

30 (vii) Construction of a dock, including a community dock, designed
31 for pleasure craft only, for the private noncommercial use of the
32 owner, lessee, or contract purchaser of single and multiple family
33 residences. This exception applies if either: (A) In salt waters, the
34 fair market value of the dock does not exceed two thousand five hundred
35 dollars; or (B) in fresh waters, the fair market value of the dock does
36 not exceed ten thousand dollars, but if subsequent construction having
37 a fair market value exceeding two thousand five hundred dollars occurs

1 within five years of completion of the prior construction, the
2 subsequent construction shall be considered a substantial development
3 for the purpose of this chapter;

4 (viii) Operation, maintenance, or construction of canals,
5 waterways, drains, reservoirs, or other facilities that now exist or
6 are hereafter created or developed as a part of an irrigation system
7 for the primary purpose of making use of system waters, including
8 return flow and artificially stored groundwater for the irrigation of
9 lands;

10 (ix) The marking of property lines or corners on state owned lands,
11 when such marking does not significantly interfere with normal public
12 use of the surface of the water;

13 (x) Operation and maintenance of any system of dikes, ditches,
14 drains, or other facilities existing on September 8, 1975, which were
15 created, developed, or utilized primarily as a part of an agricultural
16 drainage or diking system;

17 (xi) Site exploration and investigation activities that are
18 prerequisite to preparation of an application for development
19 authorization under this chapter, if:

20 (A) The activity does not interfere with the normal public use of
21 the surface waters;

22 (B) The activity will have no significant adverse impact on the
23 environment including, but not limited to, fish, wildlife, fish or
24 wildlife habitat, water quality, and aesthetic values;

25 (C) The activity does not involve the installation of a structure,
26 and upon completion of the activity the vegetation and land
27 configuration of the site are restored to conditions existing before
28 the activity;

29 (D) A private entity seeking development authorization under this
30 section first posts a performance bond or provides other evidence of
31 financial responsibility to the local jurisdiction to ensure that the
32 site is restored to preexisting conditions; and

33 (E) The activity is not subject to the permit requirements of RCW
34 90.58.550;

35 (xii) The process of removing or controlling an aquatic noxious
36 weed, as defined in RCW 17.26.020, through the use of an herbicide or
37 other treatment methods applicable to weed control that are recommended

1 by a final environmental impact statement published by the department
2 of agriculture or the department jointly with other state agencies
3 under chapter 43.21C RCW.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 35A.63 RCW
5 to read as follows:

6 (1) A special height moratorium is created on the Olympia Isthmus
7 in the area adjacent to the historic Budd Inlet named in RCW 90.58.030
8 in order to protect the scenic beauty of the state capitol campus for
9 the citizens of this state and for out-of-state visitors.

10 (2) The Olympia Isthmus special height moratorium is located as
11 follows: The Olympia Isthmus--from the western boundary of Capitol
12 Waterway in Olympia proceeding west to the shoreline of the Deschutes
13 spillway bounded by Capitol Lake shoreline and Budd Inlet shoreline.

14 (3) The maximum allowable height for a new or remodeled building or
15 structure located within the Olympia Isthmus special height moratorium
16 is thirty-five feet. This section only applies to new construction,
17 and remodeling or restructuring that affects the height of the
18 building. This section is not intended to prevent normal repair,
19 maintenance, and internal remodeling of any building already exceeding
20 the height limitation.

21 NEW SECTION. **Sec. 6.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and takes effect
28 immediately."

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1 On page 1, line 2 of the title, after "act;" strike the remainder
2 of the title and insert "amending RCW 90.58.030; adding a new section
3 to chapter 90.58 RCW; adding a new section to chapter 35A.63 RCW;
4 creating new sections; and declaring an emergency."

EFFECT: Continues the moratorium or control when a proposed master program or amendment has been submitted to the department. The moratorium remains in effect until the department takes final action on the proposal. Provides that the moratorium or control will expire six months from the date of submitting the proposed master program or amendment if final action has not been taken by the department.

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